Ex Parte Filing: Meeting with FCC on Tribal issues, Wednesday, March 7, 2012

Attendees: Shirley Ortiz, General Manager, San Carlos Apache Telecommunications Utility Incorporated; Terry Ross, Chairman, San Carlos Apache Telecommunications Utility Inc.; Steven Kramer, Chief Financial Officer; San Carlos Apache Telecommunications Utility Incorporated; Bill Bryant, General Manager, Saddleback Communications & Vice Chair, National Tribal Telecommunications Association; Darlene Burden, Hopi Telecommunications, Inc. & Secretary, National Tribal Telecommunications Association; Luke Johnson, Chairman, Ft. Mojave Telecommunications, Inc.; Eric Jensen, Policy Counsel, National Tribal Telecommunications, Inc. FCC: Wireline Competition Bureau; Wireless Telecommunications Bureau; Office of Native Affairs and Policy.

The Tribal Telecommunications Companies met with FCC officials to discuss Tribal access to Broadband service and the impact of the USF and ICC reform Order and the proposed Low-Income Support Order on Tribal Telecos and Tribal communities.

NTTA commented the FCC's proposed "ETC Engagement" provisions were a strong acknowledgement of Tribal sovereignty and made practical sense. Requiring regulatory providers to consult with underserved and unserved communities regarding deployment of service in remote and culturally unique communities, particularly regarding key services such as public safety and connecting key anchor institutions in Tribal communities, made sound business sense and ultimately promotes efficient use of Universal Service funds.

The Tribal telecos related their past as "unserved" areas and cited their record of improving connectivity in unserved communities to garnering 700 to 900 percent improvement in connectivity for their communities both in voice dialtone and in access to broadband. NTTA said while becoming a Tribal teleco is not a solution embraced by every Tribe, nevertheless the examples of the 8 regulatory fully operational companies offers up a shining model of success and demonstrated high efficiency of USF funds when looking at the metrics of results.

NTTA stated it wanted to address 4 areas of discussion. First NTTA suggested further strengthening of the self-sufficiency of Tribes and a greater control over the regulatory services provided to their communities. In the 555 other Tribal communities that have not formed their own regulatory services, Tribal lands are the worst connected communities in the United States for voice dialtone and for broadband. NTTA suggested an additional step giving Tribal governments a choice of their ETC providers can further strengthen their sovereignty and may improve the quality of regulatory services to their community.

Second, NTTA asked the Wireline Competition Bureau to look within the framework of uniqueness outlined by paragraphs 1059 and 1088 to treat Tribes that have created their own telecos differently and permit Tribally owned telecos to continue receiving their 2011 funding levels. One consequence is some tribes will be harmed significantly by the FCC's Order (the Gila River, Mescalero and Hopi Tribes have submitted redacted data to the FCC on the impact of the Order.) Another justification for consideration of the FCC's cuts on Tribally owned telecos' funding is based on the unique role and characterization of service Tribally owned telecos represent. Tribally owned telecos are essentially public interest services provided to an entire community with little room to change their service style or client services. The Tribally provided services must serve the entire needs of Tribal communities from public safety, to supporting education, provisioning governmental offices, to provisioning anchor institutions and are established with the proviso that they must remain self-sufficient and will not turn to the Tribe to augment their operations—RUS has strong partitioning requirements for limited liability separation from Tribal finances. So unlike commercial ETCs that are more nimble and deep-pocketed and can change with market and regulatory trends, Tribes are fully committed to the level and quality of service they are providing. Any shift of funding source and levels will affect the scope and quality of service provided to the remote communities, though not as quantifiable as the Commission may demand. Finally, there is the government-to-government exchange of expectations. Only three out of 564 Tribes have become their own regulatory provider since the Telecom Act of 1996. (Standing Rock is a CETC) This difficult arc of becoming a regulatory provider has not been an easy process for any of the Tribes. Yet the sense is that if a Tribal government commits to adherence to the regulatory requirements of the FCC they would be able to receive predictable support in exchange for the full adherence to the federal rules. Yet in this round of rule changes, the Tribes are caught mid-stream in their obligatory provisioning of carrier-of-last-resort services and investments and financial obligations and told they would take such cuts mid-stream as deemed necessary for all telecos. (NTTA has provided comments that a rough estimate of the amount of funding necessary to enable Tribally owned telecos at their previous funding levels would be no more than $3-4 million annually in previously unserved and underserved areas that still require continued support to attain parity with non-Indian communities.) This prospect of de-stabilizing financial predictability and potential cuts that might require Tribal assistance beyond their expectations of self-sufficient services will have a decided "chilling affect" on other Tribes embracing this difficult but highly proven model of changing lack of access to advanced service to Tribal lands.

The response from the FCC was the Bureau found the issues and uniqueness of Tribally owned telecommunications providers unconvincing and un-compelling. Instead they turned to waivers as the path for Tribal telecos. When NTTA commented that the waiver process seemed untenable and highly burdensome, the Wireline Bureau asked why. NTTA's response was it would provide a response in the Ex Parte filing.

<u>*Response to why Waiver process is burdensome on Tribally-owned telecos*</u>:

In paragraphs 539-544, the FCC outlines the waiver process. While the Commission stated that any and all provisions of the Order may be waived, that it expects few petitions to be approved "routinely" and such petitions would be subject to rigorous, thorough and searching reviews. On a broader level such petitions must: clearly
demonstrate that good cause exists to exempt a carrier from the rule and that it is in the public interest to ensure that customers in the area continue to get voice service.

The petitioner must show that the company will be negatively affected by the FCC's Order. The petitioner must show that the Order's action or changes threaten the company's financial viability. The petitioner must demonstrate good cause exists to waive the rules and it is in the public interest. The petitioner must show that voice service will be impacted. The petitioner must open its company and Tribal records to a total earnings review, including all records showing revenues from unregulated and unsupported sources. The petitioner must also show that it is in an area where there is no terrestrial alternative service. The petitioner must show that support not be able to support services under Section 254 requirements. The petitioner can show that the Order would cause a provider to default on existing loans and/or become insolvent.

In addition, petitions must include all financial data and other information sufficient to verify the carrier's assertions, including, at a minimum, the following information:

- Density characteristics of the study area or other relevant geographic area including total square miles, subscribers per square mile, road miles, subscribers per road mile, mountains, bodies of water, lack of roads, remoteness, challenges and costs associated with transporting fuel, lack of scalability per community, satellite and backhaul availability, extreme weather conditions, challenging topography, short construction season or any other characteristics that contribute to the area's high costs.

- Information regarding existence or lack of alternative providers of voice and whether those alternative providers offer broadband.
- (For incumbent carriers) How unused or spare equipment or facilities is accounted for by providing the Part 32 account and Part 36 separations category this equipment is assigned to.
- Specific details on the make-up of corporate operations expenses such as corporate salaries, the number of employees, the nature of any overhead expenses allocated from affiliated or parent companies, or other expenses.
- Information regarding all end user rate plans, both the standard residential rate and plans that include local calling, long distance, Internet, texting, and/or video capabilities.
- A list of services other than voice telephone services provided over the universal service supported plant, e.g., video or Internet, and the percentage of the study area's telephone subscribers that take these additional services.
- (For incumbent carriers) Procedures for allocating shared or common costs between incumbent LEC regulated operations, competitive operations, and other unregulated or unsupported operations.
- Audited financial statements and notes to the financial statements, if available, and otherwise unaudited financial statements for the most recent three fiscal years. Specifically, the cash flow statement, income statement and balance sheets. Such statements shall include information regarding costs and revenues associated with unregulated operations, e.g., video or Internet.
- Information regarding outstanding loans, including lender, loan terms, and any current discussions regarding restructuring of such loans.
- Identification of the specific facilities that will be taken out of service, such as specific cell towers for a mobile provider, absent grant of the requested waiver.

- For Tribal lands and insular areas, any additional information about the operating conditions, economic conditions, or other reasons warranting relief based on the unique characteristics of those communities.

The Order concludes: "Failure to provide the listed information shall be grounds for dismissal without prejudice." In addition to the above, the petitioner shall respond and provide any additional information as requested by Commission staff.

NTTA addressed a third concern: That the Commission's Order and general policy will fail to address Native lands' need for broadband and close the disparity gap between Native and non-Native communities. Three specific issues were raised by NTTA. First, the first and only response to the 90 percent lack of broadband access in Native lands is the Mobility Fund proposal to target $50 million (that actually is funded by wireless merger set-aside contributions) and then $100 million annually to deploy 3G and 4G throughout Native lands is upside down in meeting the very pronounced and fundamental needs of Native lands for Broadband public infrastructure. It appears that the $50 million in phase one could be used up just to bring 3G or 4G to one or two large remote Native areas. This fails to take into consideration the more difficult prospect of delivering parity of broadband service throughout Native America. Second, the process of competitive auctions inherently will lead to haphazard and unpredictable results in fund dispersal that is unconnected to need or relative need in Native lands. The FCC has said NTTA has been non-responsive on this fatally flawed approach to spending the mobility funds, but NTTA is unsure how such a drastically flawed process will help unserved Tribal areas in a comprehensive or predictable manner. It also ensures that the few lucky Native communities will get the cheapest possible network competitively bid. (It is also uncertain how Tribal mobility ETCs—there are none currently--will qualify as provider in any of these auctions.) A third set of issues regarding the fundamental need of Native lands is in the future price cap carrier option to decline serving unserved areas. This will set off a series of competitive (reverse) auctions that will determine which Tribes will be served by whom and for how large or comprehensive a network. (the lowest cost bids will win each of these competitions.) This will leave Native governments uncertain how and what broadband service will be targeted at their communities. NTTA has proposed that Native governments be able to serve their own Native area—and preferably not have to engage in competitive bidding to step into that regulatory role. A prospect that a Tribal government enters into a competition for its tribal area and loses that competition to a non-Native provider sets up a vast potential for problems in areas that have been traditionally underserved and unserved by non-Native providers.

NTTA's last area of concern is to seek the extension of the low-income program to an Enhanced Broadband Lifeline and Linkup program. The reality is if 84 percent of subscribers in Gila River, if 65 percent of subscribers in San Carlos, and if 700 families in Hopi cannot afford basic phone service, which range between $18.00 to $23.00 per month, how can Native residents possibly afford residential broadband service without a similar consumer support program. NTTA understands the need to transition into a Broadband Lifeline and Linkup program through a pilot project to right-size and determine the underlying administrative mechanism, NTTA is also concerned that the FCC may not have a commitment to help Native consumers beyond the pilot program being proposed.

NTTA's larger ask is a greater inclusion by Native governments, Tribally-owned telecos, and Native advocates, in the development of policy and solutions for Native lands.